

## COMPETITIVE BIDDING IN GRANTING LICENSES AND PERMITS

MARCH 23, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

### REPORT

together with

### MINORITY VIEWS

[To accompany H.R. 1218]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1218) to extend the authority of the Federal Communications Commission to use competitive bidding in granting licenses and permits, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### CONTENTS

	Page
Text of the legislation .....	1
Purpose and summary .....	2
Background and need .....	2
Committee consideration .....	3
Rollcall votes .....	3
Committee oversight findings .....	4
Committee on Government Reform and Oversight .....	4
Committee cost estimates .....	5
Congressional Budget Office estimates .....	5
Inflationary impact statement .....	7
Changes in existing law made by the bill, as reported .....	7
Minority views .....	8

## PURPOSE AND SUMMARY

The purpose of the legislation is to extend the Federal Communication Commission's (FCC) competitive bidding authority which was originally granted in 1993 only through FY 1998. H.R. 1218 extends this authority for an additional two years, through the end of FY 2000. The bill does not expand the scope of the authority beyond current authorization.

## BACKGROUND AND NEED FOR LEGISLATION

Spectrum auctioning was authorized to solve two major problems plaguing the previous spectrum allocation systems: extreme inefficiencies in assigning licenses and the failure to secure compensation for the public for the use of a highly desirable and scarce public resource. Previously, the FCC allocated spectrum by means of comparative hearings or by conducting a lottery. These processes often proved seriously flawed and produced a significant number and range of complaints.

Comparative hearings were the order of the day for many years and continue to be used to award broadcast licenses. They have not been free from problems. These hearings have often been subject to protracted litigation over who was the most deserving licensee. Comparative hearings consequently often resulted in extended delays in awarding the license, which in turn delayed the commencement of service to the public.

The lottery system has likewise been criticized for failing to meet the FCC's public interest standard and for encouraging speculation for spectrum licenses. When used to provide cellular licenses, the lottery process ultimately revealed the intentions of many lottery participants as being disinterested in providing a new and useful technology for the consumer, but instead being interested merely in obtaining the license for subsequent resale. In fact, many lottery applicants were unqualified to build and/or operate a cellular system. Instead, these applicants only sought to win the license to determine its value in a quickly developing private market. Consequently, the actual construction of cellular facilities was unnecessarily delayed until the license was ultimately bought by a qualified licensee. The rampant speculation and subsequent trafficking in license authority amounted to a private auction, with proceeds going into the pockets of the speculators.

The success of the recently concluded auctions validate the congressional goals in enacting them in 1993. The Committee believes that extending this authority for two more years will continue to serve the purpose of compensating the public by making spectrum available for commercial use through a competitive bidding system. The competitive bidding process has also resulted in the timely awarding of licenses. For example, the recently concluded broadband spectrum auction for personal communications services (PCS) was concluded in a little more than three months.

When Congress authorized the use of spectrum auctions, it gave the Commission specific guidelines to follow when developing the rules for each specific auction. The Commission's use of the auction is limited to situations when there are mutually exclusive applications for an initial license, and the service to be offered is, or is

likely to be, a subscription service. Thus, licenses for free, over-the-air broadcast remain exempt. The bidding process is intended to promote the rapid development of new technologies, products and services to be made available to the public.

The bidding methodologies developed by the Commission are intended to avoid the concentration of licenses and include performance requirements, subject to deadlines and penalties, to ensure prompt delivery of services and to prevent stockpiling or warehousing of spectrum by licensees. These rules provide minimum standards and requirements to ensure winning bidders can actually produce the services offered. In addition, various payment schedules were permitted under the statute to allow the FCC to provide opportunities to small entrepreneurial companies as well as larger, better financed industry participants.

Since 1993, the FCC has conducted four spectrum auctions: two for narrowband PCS licenses; one for Interactive Video and Data Service (IVDS) licenses; and one for the recently completed broadband spectrum auction for PCS licenses. The four auctions have produced a total of almost \$9 billion for the general fund of the U.S. Treasury. For example, the nationwide narrowband auction that was completed in July, 1994, generated over \$600 million for the Treasury. A subsequent regional narrowband auction raised nearly \$500 million. The IVDA auction raised over \$200 million. The FCC's recently completed broadband auction of spectrum for PCS yielded commitments for receipts totaling over \$7.1 billion in high bids. This auction provided 99 licensees in 51 markets to 18 companies. The revenue raised by this auction makes it the most successful auction of government assets to date. In addition, the Commission expects to conduct further auctions for spectrum licenses later this year.

The Committee finds that the success of the past spectrum auction plans warrant their extension for an additional two years. The revenue generated by the extension will provide a badly needed source of income for the federal government and will continue the process of efficient licensing of spectrum use. Additionally, extending the competitive bidding process will continue to advance the goal of increasing the rapid deployment of new technologies and services for consumers.

#### COMMITTEE CONSIDERATION

On March 15, 1995, the Committee met in open markup session and ordered the bill, H.R. 1218, be reported by a voice vote, a quorum being present.

#### ROLL CALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes related to the consideration of H.R. 1218, including the names of those members voting for and against.

## COMMITTEE ON COMMERCE—104TH CONGRESS ROLL CALL VOTE NO. 37

Bill: H.R. 1218, A bill to extend the authority of the Federal Communications Commission to use competitive bidding in granting licenses and permits.

Amendment: Amendment by Mr. Markey re: direct the proceeds from competitive bidding process be used for deficit reduction.

Disposition: Not agreed to, by a roll call vote of 18 ayes to 22 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bilely .....		X		Mr. Dingell .....	X		
Mr. Moorhead .....		X		Mr. Waxman .....			
Mr. Fields .....		X		Mr. Markey .....	X		
Mr. Oxley .....		X		Mr. Tauzin .....	X		
Mr. Bilirakis .....		X		Mr. Wyden .....	X		
Mr. Schaefer .....		X		Mr. Hall .....	X		
Mr. Barton .....				Mr. Bryant .....	X		
Mr. Hastert .....		X		Mr. Boucher .....	X		
Mr. Upton .....		X		Mr. Manton .....	X		
Mr. Stearns .....		X		Mr. Towns .....	X		
Mr. Paxon .....		X		Mr. Studds .....			
Mr. Gillmor .....		X		Mr. Pallone .....	X		
Mr. Klug .....				Mr. Brown .....	X		
Mr. Franks .....				Mrs. Lincoln .....	X		
Mr. Greenwood .....		X		Mr. Gordon .....	X		
Mr. Crapo .....		X		Ms. Furse .....	X		
Mr. Cox .....		X		Mr. Deutsch .....	X		
Mr. Burr .....		X		Mr. Rush .....	X		
Mr. Bilbray .....		X		Ms. Eshoo .....	X		
Mr. Whitfield .....		X		Mr. Klink .....	X		
Mr. Ganske .....		X		Mr. Stupak .....	X		
Mr. Frisa .....		X					
Mr. Norwood .....		X					
Mr. White .....		X					
Mr. Coburn .....		X					

## COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

Bill: H.R. 1218, A bill to extend the authority of the Federal Communications Commission to use competitive bidding in granting licenses and permits.

Motion: Motion by Mr. Fields to order H.R. 1218 reported to the House.

Disposition: Agreed to, by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight hearings were held.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that enactment

of H.R. 1218 would result in no additional costs to the Federal Government.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 22, 1995.*

Hon. THOMAS J. BLILEY, Jr.  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1218, a bill to extend the authority of the Federal Communications Commission to use competitive bidding in granting licenses and permits.

Enactment of H.R. 1218 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1218.

2. Bill title: A bill to extend the authority of the Federal Communications Commission to use competitive bidding in granting licenses and permits.

3. Bill status: As ordered reported by the House Committee on Commerce on March 15, 1995.

4. Bill purpose: H.R. 1218 would extend the authority of the Federal Communications Commission (FCC) to auction certain radio spectrum licenses through the end of fiscal year 2000. Under current law, FCC's auction authority will expire at the end of fiscal year 1998.

5. Estimated cost to the Federal Government: CBO expects that, under current law, distributing radio spectrum licenses through competitive bidding will result in the collection of approximately \$13 billion in offsetting receipts over the next six years, and that enacting H.R. 1218 would increase offsetting receipts for the 1998–2000 period by approximately \$2 billion. The following table compares estimated receipts under current law and under H.R. 1218.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Projected auction receipts:						
Under current law:						
Estimated budget authority .....	– 9,300	– 1,000	– 500	– 500	– 700	– 1,300
Estimated outlays .....	– 9,300	– 1,000	– 500	– 500	– 700	– 1,300

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Estimated changes:						
Estimated budget authority .....	0	0	0	-400	-800	-800
Estimated outlays .....	0	0	0	-400	-800	-800
Projected auction receipts under H.R. 1218:						
Estimated budget authority .....	-9,300	-1,000	-500	-900	-1,500	-2,100
Estimated outlays .....	-9,300	-1,000	-500	-900	-1,500	-2,100

The costs of this bill fall within budget function 950.

6. Basis of estimate: Although the FCC has not indicated how it would allocate the spectrum to be licensed through competitive bidding, the estimate assumes that the FCC would allocate spectrum to the highest-valued use, which we expect would be for land mobile telephone services. Such services could be similar to those to be offered by winners of the recent broadband personal communications services (PCS) auction conducted by the FCC.

The precise frequencies and amounts of spectrum the FCC would allocate for assignment by auction are uncertain. The prices that bidders would be willing to pay are also difficult to estimate. It is likely, however, that these prices would be significantly lower than those paid at recent FCC auctions because the market for and mobile telecommunications services will be more competitive in the late 1990s than it is currently.

CBO expects that some receipts would result from this bill in 1998 because we expect that under current law the FCC would choose not to move forward with auctions that would likely take place near the expiration of the Commission's current competitive bidding authority. Any delay in the process for these later auctions could push the auction date past the FCC's authority deadline, resulting in a cancellation of any such planned auctions. Extension of the FCC's competitive bidding authority would remove any incentive potential bidders might have to delay the auction process, and the FCC would be more likely to plan and move forward with auctions in the 1998.

CBO assumes that the auctioned licenses would grant the same property rights as current licenses. The licensee would have exclusive use of the frequencies that are auctioned and could expect FCC approval in selling the license to another qualified party. The licensee would have a very high expectation that the license would be renewed upon expiration and that the license would not be auctioned again when it expires.

Taking into account the uncertainties surrounding the amount and quality of the spectrum the commission may choose to allocate and market conditions, CBO estimates that extending the FCC's auction authority would increase receipts by \$1.5 billion to \$2.5 billion from 1998 through 2000. CBO's estimate is \$2 billion, the midpoint of this range.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 1218 would result in increased offsetting receipts (negative direct spending) of \$400 million in 1998, as shown in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays .....	0	0	-400
Change in receipts .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Not applicable.

8. Estimated cost to State and local governments: None.  
9. Estimate comparison: None.  
10. Previous CBO estimate: None.  
11. Estimate prepared by: John Webb.  
12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

## SECTION-BY-SECTION ANALYSIS

## SECTION 1. EXTENSION OF THE AUTHORITY

Section 1 amends the Communications Act of 1934 by extending the authority of the FCC to continue the competitive bidding of spectrum licenses from September 30, 1998 to September 30, 2000.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 309 OF THE COMMUNICATIONS ACT OF 1934****SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.**

(a) \* \* \*

\* \* \* \* \*

(j) USE OF COMPETITIVE BIDDING.—

(1) \* \* \*

\* \* \* \* \*

(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, [1998] 2000.

\* \* \* \* \*

## MINORITY VIEWS

We dissent from the majority for two fundamental reasons: the process that the Republicans have utilized to approve this legislation, and the lack of meaningful oversight before proceeding to extend the Federal Communications Commission's authority to issue licenses using competitive bidding procedures.

Our procedural objections are based on the fact that this bill was approved in a vacuum. Ordinarily, before this Committee approves a revenue raising measure of this magnitude, Congress will have approved a Budget Resolution setting forth spending and revenue projections that provide an overall context in which to consider a bill such as H.R. 1218. The size of the budget will be known ahead of time. If there is to be a tax cut, as well as a serious attack on the deficit, Members of the Committee will have had the opportunity to decide whether or not approving this bill represents a responsible course of action.

In this case, however, the House has not approved a Budget Resolution. No reconciliation instructions were issued. The size of the overall Federal budget, the size (if any) of the deficit, and the magnitude of any tax cut are, at this point, unknown.

Yet despite the lack of an overall context to provide the basis for making a responsible decision to extend competitive bidding authority, the majority saw fit to move the legislation to the full House anyway. The Democratic amendment to earmark the estimated \$2 billion for deficit reduction was defeated on a party line vote. In our view, approval of this bill by the Republican majority was both premature and irresponsible.

In addition, we also object to the fact that the legislation was approved without a hearing or any attempt to determine whether, in fact, competitive bidding authority ought to be extended. The authority has been used by the Federal Communications Commission for only six short months. It has been used to issue only three classes of licenses, and there are significant differences among each of the classes. We are all pleased that the broadband MTA licenses in the Personal Communications Service (PCS) appear to have raised in excess of \$7 billion. However, in our view, the decision to extend this authority ought to be based on more than a newspaper headline announcing the total amounts bid.

For example, several members—both Republicans and Democrats—expressed concern about the manner in which the Commission was utilizing this authority with respect to licenses in the Specialized Mobile Radio Service (SMR). During the course of the mark-up, the Subcommittee Chairman announced that a briefing was going to be held to give Members a better understanding of the Commission's decisions and intentions. In our view, the Committee ought to have held that briefing before deciding to extend the authority to utilize competitive bidding procedures.



Ironically, during the same week that H.R. 1218 was introduced and approved by the Committee, a court issued a stay to prevent the Commission from utilizing its competitive bidding authority to issue licenses for one group of licenses for broadband PCS. These are blocks of frequencies reserved for "Designated Entities," including small businesses, firms owned by minorities and women, and small telephone companies.

Many of us support the "Designated Entity" approach adopted by the Commission. No matter what our position, however, in our view it is irresponsible to approve H.R. 1218, thereby blessing the Commission's "Designated Entity" policies, without conducting the necessary oversight so as to determine whether the underlying statute ought to be modified or in some way clarified.

We understand that the funds resulting from the extension of competitive bidding authority will be used to offset some portion of the tax cut that will soon be brought to the House floor. Whether or not we end up voting for the tax cut, we object to the irresponsible manner in which H.R. 1218 was brought before the Committee. The combination of the lack of both an overall budget resolution upon which to base our decisions, and any oversight whatsoever, particularly given the limited experience with competitive bidding, have led us to oppose the enactment of H.R. 1218.

JOHN D. DINGELL.  
HENRY A. WAXMAN.  
EDWARD J. MARKEY.  
BILLY TAUZIN.  
RON WYDEN.  
RALPH M. HALL.  
JOHN BRYANT.  
RICK BOUCHER.  
THOMAS J. MANTON.  
EDOLPHUS TOWNS.  
GERRY E. STUDDS.  
FRANK PALLONE, JR.  
SHERROD BROWN.  
BLANCHE LAMBERT LINCOLN.  
BART GORDON.  
ELIZABETH FURSE.  
PETER DEUTSCH.  
BOBBY L. RUSH.  
ANNA G. ESHOO.  
RON KLINK.  
BART STUPAK.